

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JOHN A. PURKINS)

Appearances:

For Appellant: John A. Purkins,
in pro. per.

For Respondent: Carl G. Knopke
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of John A. Purkins against proposed assessments of additional personal income tax in the amounts of \$1,016.97, \$882.71, \$961.56, \$612.46, and \$955 for the years 1975, 1976, 1977, 1978, and 1979, respectively.

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The sole issue is whether appellant John A. Purkins was a California resident for the years 1975 through 1979.

John A. Purkins was born and raised in California. In 1974, he entered an employment contract with Holmes & Narver, Inc., to work as a recreation supervisor on Johnston Island for a 26-week period. The island is located approximately 700 miles southwest of Honolulu, is extremely small, and is operated as a military base by the United States. Mr. Purkins was furnished room and board while he was on the island, and while he was there, he had his employer transmit to California all of his salary in excess of \$100 per month. Mrs. Purkins and appellants' children remained at the family home in Chula Vista. When the first employment term ended, Mr. Purkins agreed with his employer to a similar term of Johnston Island employment, which commenced following a two-week vacation off the island. Mr. Purkins used that vacation time to be with his family in Chula Vista, spending three days in Honolulu en route. Similar terms of Johnston Island employment, interspersed by similar short returns to Chula Vista, continued throughout the years at issue.

For 1975, 1976, 1977, and 1979, appellants filed joint income tax returns but excluded from their gross income all the wages Mr. Purkins earned on Johnston Island. For 1978, Mrs. Purkins filed a separate return and Mr. Purkins did not file at all. When respondent questioned the filings for these years, appellants filed amended joint returns for all five years which reported one-half of Mr. Purkins' income, apparently on the basis of Mrs. Purkins' community property share of that income. Respondent determined that Mr. Purkins remained a California resident while employed on Johnston Island and issued proposed assessments which included all that income. Appellants protested the assessments. After a hearing and consideration of the protests, respondent affirmed its assessments. This appeal followed.

Section 17041 of the Revenue and Taxation Code imposes a personal income tax on the entire taxable income of every resident of this state. Section 17014, subdivision (a), of the Revenue and Taxation Code defines "resident" to include:

(1) Every individual who is in this state for other than a temporary or transitory purpose.

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(2) Every individual domiciled in this state who is outside the state for a temporary or transitory purpose.

The initial question is whether appellant was domiciled in California within the meaning of section 17014, subdivision (a)(2), throughout the years at issue.

California Administrative Code, title 18, regulation 17014, subdivision (c), provides that a domicile

is the place in which a man has voluntarily fixed the habitation of himself and family, not for a mere special or limited purpose, but with the present intention of making a permanent home, until some unexpected event shall occur to induce him to adopt some other permanent home.

This intention is not to be determined simply from the party's general statements. Rather, the acts and declarations of the parties are to be taken into consideration. (Estate of Phillips, 269 Cal.App.2d 656 [75 Cal.Rptr. 301] (1969); Appeal of Robert M. and Mildred Scott, Cal. St. Bd. of Equal., March 2, 1981.)

A person can only have one domicile at a time. For a person to establish a new domicile and so change his former domicile, he must take up actual, physical residence in a particular place with the intent to make that place his permanent abode. A union of act and intent is essential. Until such a union occurs, one retains his former domicile. One does not lose a former domicile by going to and stopping at another place for a limited time with no intention to make this his permanent abode. (Chapman v. Superior Court, 162 Cal.App.2d 421 [328 P.2d 23] (1958); 16 Cal.Jur.2d (rev.) Domicile, § 4, p. 764; 12 Cal.Jur.3d, Conflict of Laws, Summary, p. 505.) The burden of proving the acquisition of a new domicile is on the person asserting that domicile has been changed. (Sheehan v. Scott, 145 Cal. 684 [79 P. 350] (1905).)

We do not believe that appellant's repetitive-term employment on Johnston Island demonstrates that at any time he was there he intended to remain there permanently or indefinitely. Accordingly, he remained a -California domiciliary.

Since appellant was domiciled here, he will be considered a California resident if his absences were for

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a temporary or transitory purpose. In the Appeal of David J. and Amanda Broadhurst, decided by ~~this board~~ on April 5, 1976, we summarized, as follows, the regulations and case law interpreting the phrase "temporary or transitory purpose":

Respondent's regulations indicate that whether a taxpayer's purposes in entering or leaving California are temporary or transitory in character is essentially a question of fact, to be determined by examining all the circumstances of each particular case. [Citations.] The regulations also provide that the underlying theory of California's definition of "resident" is that the state where a person has his closest connections is the state of his residence. [Citations.] ... Some of the contacts we have considered relevant are the maintenance of a family home, bank accounts, or business interests: voting registration and the possession of a local driver's license; and **ownership** of real property. [Citations.] Such connections are important both as a measure of the benefits and protection which the taxpayer has received from the laws and government of California, and also as an objective indication of whether the taxpayer entered or left this state for temporary or transitory purposes. [Citation.]

Throughout the years at issue, Mrs. Purkins and the children remained in the family home in Chula Vista. In 1975 and 1976, this was a rented house. In September of 1977, appellants purchased a house in Chula Vista, taking title in both their names. During the appeal years, Mrs. Purkins was employed in Chula Vista and the children attended school there. Mr. Purkins retained his California **driver's license and automobile registration**, and conducted all of his banking activities in this state. Appellants have demonstrated no contacts Mr., Purkins maintained with Johnston Island other than those required by his employment there.

In their brief, appellants stated that Mr. Purkins intended to remain on Johnston Island as long as there was work available there. They argue that the conclusion that he was not a California resident is supported by respondent's Audit Ruling AR-107.1. Seemingly, they are referring to two statements **within that ruling:** (1) "Generally, a resident who accepts employment outside

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California on a permanent basis becomes a nonresident for income tax purposes when he leaves this State[,] and (2) "[a]n individual who accepts employment outside the State for an indefinite period of time shall be considered to be a nonresident unless evidence to the contrary indicates otherwise." We do not find that argument persuasive. First, an optionally renewable employment contract for a 26-week term seems to be other than employment for a permanent or indefinite term. Second, there exists in this case contrary evidence of the type considered by the regulations to be persuasive of the issue, i.e., the evidence that Mr. Purkins maintained his family here and returned here whenever his employment permitted.

We also note that respondent's determination of residency status is presumed to be correct; the taxpayer bears the burden of proving respondent's actions erroneous. (Appeal of Patricia A. Green, Cal. St. Bd. of Equal., June 22, 1976; Appeal of Robert C. Sherwood, Deceased, and Irene Sherwood, Cal. St. Bd. of Equal., Nov. 30, 1965.)

We have held in prior cases that if a person had the necessary contacts with California, his or her employment-related absences from this state were deemed temporary or transitory in nature. (Appeal of Duane H. Laude, Cal. St. Bd. of Equal., Oct. 6, 1976; Appeal of John Haring, Cal. St. Bd. of Equal., Aug. 19, 1975.) Since appellant's only contact with Johnston Island was his employment-required presence there, and all his other contacts set forth above were with California, we can only conclude that his presence on Johnston Island was for a temporary or transitory purpose within the meaning of section 17014 of the Revenue and Taxation Code. Accordingly, respondent's action must be sustained.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of **John A.** Purkins against proposed assessments of additional personal income tax in the amounts of **\$1,016.97, \$882.71, \$961.56, \$612.46,** and \$955 for the years 1975, 1976, 1977, 1978, and 1979, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 8th day of May , 1984, by the State Board of Equalization, with Board **Members Mr.** Nevins, Mr. Dronenburg, Mr. Collis, Mr. Bennett and Mr. Harvey present.

<u>Richard Nevins</u>	, Chairman
<u>Ernest J. Dronenburg, Jr.</u>	, Member
<u>Conway H. Collis</u>	, Member
<u>William M. Bennett</u>	Member
<u>Walter Harvey*</u>	, Member

*For Kenneth Cory, per Government Code section 7.9